IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 20,228

GREAT WESTERN LAND & DEVELOPMENT, INC., ARIZONA SYNDICATIONS, INC., AMERICAN TRUST CO., INC., NEVE ALLEN LAND & INVESTMENT, INC., MOHAVE INVESTMENT COMPANY, INC., ALLEN NEVE ENTERPRISES, INC., PYRAMID LAND, INC., TOLTEC LAND CORPORATION, WAYNE H. ALLEN and E. J. NEVE,

Appellants,

v.

SECURITIES AND EXCHANGE COMMISSION,

Appellee.

Appeal from the United States District Court
for the District of Arizona

BRIEF OF SECURITIES AND EXCHANGE COMMISSION, APPELLEE

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COUNTERSTATEMENT OF CASE

1. The Proceedings Below

On August 30, 1962, the Securities and Exchange Commission (Commission) filed its complaint (R. 1)[1/] to enjoin the appellants -

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1/ "R. __" refers to numbered documents in transcript of record on appeal; "Br. __" refers to pages in appellants' opening brief.

Great Western Land & Development, Inc. (Great Western), Arizona Syndications, Inc., American Trust Co., Inc., Neve Allen Land & Investment, Inc., Mohave Investment Company, Inc., Allen Neve Enterprises, Inc., Pyramid Land, Inc., Toltec Land Corporation, Wayne H. Allen (Allen) and E. J. Neve (Neve) - from making use of any means or instruments of interstate commerce or of the mails, in violation of Section 5(a) and (c) of the Securities Act of 1933 (Securities Act), 15 U.S.C. 77e(a) and (c), to offer or sell, or to carry or caused to be carried for the purpose of sale or delivery after sale, certain securities, described as "investment contracts," as to which no registration statement had been filed with the Commission.

The unverified answer of the appellants (R. 4), filed September 5, 1962, admitted that they had sold the instruments described as securities in the complaint but alleged that no such sales had been made since May 1962, and that the appellants were not then engaged in or about to engage in the acts or practices constituting the violations set forth in the complaint. The answer admitted that no registration statement with respect to the instruments described in the complaint had been filed with the Commission.

A temporary restraining order as to all appellants was entered on August 30, 1962, by the Honorable Arthur M. Davis,

United States District Judge (R. 2). By stipulation of all parties (R. 6), the restraining order was continued in effect until March 2, 1964, when the Commission's motion for preliminary injunction, and the appellants' motion to quash the temporary restraining order and to dismiss for mootness, were argued before the Honorable William J. Lindberg, United States District Judge (R. 25).[2/] The Court granted the Commission's motion for preliminary injunction as to the individual appellants Allen and Neve, and entered a preliminary injunction as to those appellants (R. 10). The Court denied the appellants' motion to dismiss for mootness (R. 10).

On March 11, 1965, the Commission filed its motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure (R. 11). The Commission's motion for summary judgment was argued on March 29, 1965, before the Honorable Walter E. Craig, United States District Judge (R. 13). The Court, based upon the pleadings and affidavits and counter-affidavits filed in the action,

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2/ Judge Davis died while the motions were under submission. This circumstance accounts for the long delay between entry of the restraining order and the hearing on the motions (R. 20, p. 3, fn. 2).

found that no genuine issue of any material fact existed, and entered summary judgment of permanent injunction as to all appellants (R. 13, 20, 21). The Court entered findings of fact and conclusions of law (R. 20).

2. The Statutes Involved

The Securities Act, 48 Stat. 74, 15 U.S.C. 77a *et seq*., was enacted, as stated in its full title, "[t]o provide full and fair disclosure of the character of securities sold in interstate and foreign commerce and through the mails, and to prevent frauds in the sale thereof . . . ."

Section 2(1) of the Securities Act, 15 U.S.C. 77b(1), defines a "security."

Section 5 of the Securities Act, 15 U.S.C. 77e, makes it unlawful to offer or sell securities by means of interstate media or the mails unless a registration statement with respect thereto has been filed with this Commission.

Section 20(b) of the Securities Act, 15 U.S.C. 77t(b), authorizes the Commission to seek an injunction to enjoin acts or practices which constitute a violation of the Act, and Section 22(a),

15 U.S.C. 77v(a), gives United States District Courts jurisdiction in such actions.[3/]

This Court has jurisdiction of this appeal pursuant to 28 U.S.C. 1291.

3. The Substantive Facts

The individual appellants, Allen and Neve, acted as either president or secretary of the eight appellant corporations. Since about February 1958 and continuing until at least May 1962,[4/] Allen and Neve utilized these eight corporations as vehicles to acquire, fractionalize and sell to the investing public undivided interests in certain "trusts" or "syndications," which were established by the appellants to hold, manage, sell and convey units of land situated in the State of Arizona (R. 3, 11).

The investments offered and sold to public investors by the appellants were evidenced by a special form of "Deed and Assignment

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3/ Pertinent portions of the Securities Act are set forth in the statutory appendix hereto, pp. A1, et seq., infra.

4/ The complaint alleged sales from about February 1958 until August 1962 (R. 1). The answer of the appellants admitted that they had sold the instruments described in the complaint, but alleged that no sales had been made since May 1962 (R. 4).

of Beneficial Interest" (R. 3). These deeds and assignments were not in any sense outright conveyances of interests in land, but merely represented fractional interests in certain trusts established pursuant to trust agreements between the corporate appellants and a title and trust company (R. 3). The appellants created these trusts in the following manner:

One of the appellant corporations would acquire title to a tract or unit of land and thereafter convey title to a title and trust company which held the land as trustee for that corporate appellant. In total, the corporate appellants entered into about 30 of these underlying trust agreements and each corporation was the designated beneficiary of at least one trust (R. 3, 11). The trust agreements were substantially identical. By the terms of the trusts:[5/] (1) the trustee held title to the land for the purposes of "subdividing, platting, deeding, selling, conveying" and otherwise managing the land in accordance with instructions received from the particular corporate appellant designated as beneficiary; (2) the trustee agreed to pay to the designated corporate appellant all funds received from sale or lease of the

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5/ Copies of the trust agreements are appended to the affidavit of Arthur H. Hutton (R. 3).

property held in trust, after deducting certain specified fees, costs, expenses and advances by the trustee; (3) third parties dealing with the trustee were exonerated from questioning whether the trustee exceeded its powers in connection with the management, control, sale, disposal or otherwise handling of the land, or the application or disbursement of funds; (4) the beneficiary was bound by liens and obligations arising from management of the trust; (5) the interest of the beneficiary in the trust was described as "personal property" without any "right, title or interest" in the land held in trust and without "any right or power to apply for or secure the dissolution or termination of [the] trust or the partition or division of any of the trust property"; and (6) the trust was to terminate upon conveyance of all the property subject to trust and disbursement of all funds held by the trustee to those entitled thereto.

The appellants sold fractional interests in the trusts described above to some 250 investors residing in 22 states of the United States and Canada.[6/] As noted, the corporate appellants assigned such fractional interests to investors by a special form of "Deed and Assignment of Beneficial Interest." By the specific

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6/ Affidavit of William M. Ziering (R. 11).

terms of this deed and assignment, the investor-assignee agreed to be bound by the terms and conditions of the underlying trust agreement, and further agreed that the trustee would take all directions concerning the trust, including directions for sale of the land held in trust, from either Allen or Neve, without the necessity of the investor, as assignee of a fractional interest in the trust, joining in such directions. 7/ The net effect of this provision was to vest absolute and complete control of the enterprise in Allen and Neve, and to prohibit the investor-assignee from playing any role whatever in the management of the trust or disposition of the land held in trust. The investors placed their economic welfare entirely in the hands of Allen and Neve. Indeed, in many instances, the deed and assignment provided specifically that land held in trust could be conveyed by the trustee to Allen or Neve, personally, or to any corporation in which they had an interest, without the necessity of consent by the investor-assignees. 8/

7/ "Deed and Assignment of Beneficial Interest" appended to affidavits of investors Sally E. Arie and George Goettlinger, and to the affidavit of Commission Staff Attorney Arthur H. Hutton (R. 3).

8/ "Deed and Assignment of Beneficial Interest" appended to affidavits of George Goettlinger and Arthur H. Hutton (R. 3).

In selling fractional interests in the "trusts" or "syndications,"[9/] Allen and Neve entered into "collateral agreements and arrangements with investors assuring them that, within six to eight months, their individual beneficial interests would be resold by [the appellants] at a profit of 100%" (R. 20, p. 5). Allen and Neve also represented to investors that the syndicating corporations always retained a 50% interest in each underlying trust, thereby assuring investors to whom small fractional interests were sold[10/] that the syndications at all times retained a vital financial stake in the enterprise at least equal to the aggregate interests of investor-assignees and that the appellants would, therefore, exert considerable efforts to arrange for sale of the land held in trust at a price which would yield the promised profit. In essence, the investors, based upon these representations, were given to understand that quick and certain profits

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9/ Allen and Neve at times referred to the underlying trusts as "syndications" (R. 3, 11).

10/ These fractional interests were in some instances as small as 1/80th of the aggregate value of the trust (R. 11).

would be forthcoming solely as a result of management and control of the enterprise by the appellants[11/] (R. 3, 11).

The representations made by Allen and Neve to investors as to the certainty of doubling their investments within six to eight months were false and misleading. Some investors did not receive any return on their investment within the promised period. Other investors, after waiting from eighteen months to three years, were able to obtain the return of all or part of their original investment, without any appreciation whatever, only after instituting legal action, or threatening to expose the appellants to the Phoenix press. At least one civil action by an investor to

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11/ One investor described his conversation with Allen and Neve with respect to investing in one of appellants' "syndications" as follows:

> ". . . Wayne H. Allen, at this point, interposed to say that to double your investment was almost a sure thing, which could practically be guaranteed within any six month period. It was understood during the conversation that Great Western Land and Development, Inc. would take care of everything and all I had to do was wait for a profit on my investment . . . ."
> (Page 3 of affidavit of Kenneth Miller - R. 11.)

seek the return of her original investment was pending at the end of July 1962 (R. 3, 11).

Sales by the appellants produced sizeable revenues. The thirty trusts established by the appellants were of varying amounts (R. 3). The aggregate value of many of these trusts ranged between $40,000 and $120,000, and in many instances the cumulative amount of fractional interests sold by the appellants in particular trusts approached 100% (R. 11). The appellants adjusted the fractional interests offered to the public so as to accommodate funds available for investment.[12/] For example, Trust #3294, established by Allen Neve Enterprises, Inc., with an aggregate value of $159,900, was sold to customers in fractional units ranging from 1/60th to 1/10th of the trust, and the cumulative value of fractional interests sold therein exceeded 90% (R.. 11).

12/ The affidavits of investors show the varied investment program offered by the appellants. One investor purchased a 1/10th interest in one trust for $7,425 (R. 3); another investor purchased a 1/40th interest in another trust for $2,750 (R. 3); and another investor purchased a 1/20th interest in still another trust for $2,820 (R. 11).

The selling activities by Allen and Neve were conducted out of the Phoenix office of Great Western. Great Western played a dual role in these sales - it was one of the syndicating corporations designated as beneficiary of some of the trusts, and also acted as broker for the sale of fractional trust interests by the other appellant corporations.[13/] Allen and Neve executed the instruments, on behalf of the appellant corporations, under which investments were sold to members of the public (R. 3, 11).

As discussed more fully hereinafter, the appellants made use of the mails in offering and selling their investment plan, and in delivering to investors after sale the instruments evidencing their investments (R. 3, 11).

The record does not show when the Commission began its investigation of the appellants' selling activities or when the appellants first learned that an investigation was being undertaken. The appellants admit, however, that by at least July 1962, an

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13/ The Purchase Contract and Receipt appended to the affidavit of Sally E. Arie (R. 3) specifically identifies Great Western as the broker for the sale to Mrs. Arie of a 1/10th interest in a trust established by Neve Allen Land & Investment, Inc.; Allen executed the contract on behalf of Great Western and Neve on behalf of Neve Allen Land & Investment, Inc.

attorney on the Commission's staff, Arthur H. Hutton (Hutton), advised them specifically that they were offering and selling a security, without registration with the Commission, in violation of the federal securities laws (R. 4, 5).

According to the affidavit (R. 7) of William W. Arnett (Arnett), an officer of International Investments, Limited (International), all the appellant corporations, with the exception of Allen Neve Enterprises, Inc. and Great Western, have merged with International and no longer exist, and Great Western, while still maintaining its separate corporate existence, has been acquired by International, and is inactive. The affidavit of Arnett also states that Allen and Neve no longer have any connection with the merged corporations. This affidavit does not specify, nor does the record show, whether Allen or Neve have any interest in International. For reasons not shown by the record, the appellant Allen Neve Enterprises, Inc. was not acquired by International. The appellants have presented no evidence to show that this corporation is presently defunct or inactive. [14/]

14/ The affidavit of Arnett (R. 7), dated February 25, 1964, states that he is president of Great Western, and that he had been affiliated with and has knowledge of the other appellant corporations with the exception of Allen Neve Enterprises, Inc. (Footnote Continued)

QUESTION PRESENTED

In the opinion of the Commission, appellee herein, the only meaningful issue before this Court on appeal is: Whether the District Court abused its discretion either (1) in granting summary judgment to the Commission on the ground that there was no genuine issue as to any of the facts which were material to establishing that appellants violated Section 5(a) and (c) of the Securities Act; or (2) in determining that the public interest required that the appellants be permanently enjoined because of the likelihood of future violations, notwithstanding self-serving declarations by the appellants that they have ceased and will not resume their unlawful activities.

SUMMARY OF ARGUMENT

The investment plan which was publicly offered and sold by appellants constituted a security within the meaning of Section 2(1) of the Securities Act. The District Court did not abuse its discretion in granting summary judgment to the Commission as the

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14/ (Footnote Continued)

Accordingly, Arnett's claim that the corporate appellants are now inactive, and that Allen and Neve have dissociated themselves therefrom, would not extend to Allen Neve Enterprises, Inc.

uncontroverted facts established that the appellants offered and sold their investment plan, without required registration with the Commission, by use of the mails. The contention of the appellants that they were not responsible for use of the mails is contrary to the record. Moreover, the Commission is not required to show that the appellants themselves used the mails, but is merely required to show, as it did here, that the mails were used by investors or others who were involved in appellants' offering of securities to the investing public.

The findings of fact and conclusions of law entered by the District Court conformed precisely to Rule 52 of the Federal Rules of Civil Procedure even though, contrary to the contention of the appellants, the Court was not required to conform its findings to that Rule.

The proper test for issuance of a statutory injunction is whether past violations and other pertinent circumstances indicate a reasonable likelihood of future violations of the statute. It has been held consistently that the fact that violators discontinue their illegal activities at or about the time the Commission commences an investigation, as did the appellants here, does not bar injunctive relief. Nor does dissolution or inactivation of certain corporate appellants, subsequent to the violations, bar

injunctive relief even as to those appellants. Accordingly, the District Court did not abuse its discretion in entering a permanent injunction against all the appellants and rejecting their self-serving declarations that they would not resume their unlawful conduct, as past violations and other evidence in the record indicated that cessation of unlawful sales could be assured for only so long as the injunction was in effect.

ARGUMENT

I. THE TRIAL COURT WAS CORRECT IN GRANTING THE COMMISSION'S MOTION FOR SUMMARY JUDGMENT IN VIEW OF THE UNCONTROVERTED FACTS ESTABLISHING THAT THE APPELLANTS MADE USE OF THE MAILS IN OFFERING AND SELLING UNREGISTERED SECURITIES IN VIOLATION OF SECTION 5(a) AND (c) OF THE SECURITIES ACT.

A. Summary Judgment is a Proper Means of Enjoining Violations of the Securities Laws Where, As Here, No Genuine Issue of Material Fact Exists.

The purpose of summary judgment under Rule 56 of the Federal Rules of Civil Procedure is to avoid useless trials and to "dispose of cases where there is no genuine issue of fact." Koepke v. Fontecchio, 177 F. 2d 125, 127 (C.A. 9, 1949). Accordingly, where material facts are uncontroverted and the Commission is entitled to relief as a matter of law, summary judgment is a proper means of enjoining violations of the federal securities laws. Securities and Exchange Commission v. Searchlight Consol. Mining & Milling Co.,

112 F. Supp. 726 (D. Nev., 1953); Securities and Exchange Commission v. Payne, 35 F. Supp. 873 (S.D. N.Y., 1940); Securities and Exchange Commission v. Larson, (E.D. Mich., 1941) 4 F.R. Serv. 36a.54, Case 1, p. 565; 6 Moore, Federal Practice (2d ed., 1953) par. 56.17[54], p. 2260.

The material facts in this action are uncontroverted. The Commission based its motion for summary judgment upon affidavits from investors, members of its staff, and others, which, together with the pleadings, established beyond question that the appellants offered and sold securities by means of the mails without required registration with the Commission. It is highly relevant that the appellants did not submit affidavits disputing or denying the facts set forth in the Commission's affidavits. In fact, the two affidavits submitted by them were limited to declarations that they made no sales since May 1962, that they did not intend to resume their selling activities, and that certain of the appellant corporations are now defunct.

Apparently, the appellants likewise agree that no genuine issue of material fact exists. Although they did not move for summary judgment in the proceedings below, they now ask this Court to grant them such relief (Br. 23-25).

B. The Uncontroverted Facts Establish Violations of Section 5(a) and (c) of the Securities Act.

The appellants make no serious contention that the investment plan which they were offering and selling to the public was not a security. Indeed, such a contention could not be reconciled with the uncontroverted facts in view of the definition of the term "security" as set forth in the Securities Act. Section 2(1) of the Act broadly defines the term "security" to encompass not only the more commonly recognized interests acquired for investment or traded for speculation, such as stocks and bonds, but also others of more variable character such as a "certificate of interest or participation in any profit-sharing agreement," a "collateral-trust certificate," an "investment contract," and "any interest or instrument commonly known as a 'security,'" and finally "any certificate of interest or participation in . . . any of the foregoing." The Supreme Court has made it clear that the term "security" as thus defined is to be given a broad and viable construction. Securities and Exchange Commission v. C. M. Joiner Leasing Corp., 320 U.S. 344 (1943); Securities and Exchange Commission v. W. J. Howey Co., 328 U.S. 293 (1946).

Mr. Justice Jackson in Joiner pointed out the wide coverage intended by Congress in subjecting securities to the requirement of full disclosure (320 U.S. at 351):

> "[T]he reach of the Act does not stop with the obvious and commonplace. Novel, uncommon, or irregular devices, whatever they appear to be, are also reached if it be proved as matter of fact that they were widely offered or dealt in under terms or courses of dealing which established their character in commerce as 'investment contracts,' or as 'any interest or instrument commonly known as a "security"'."

Mr. Justice Jackson also stated that in determining whether a security is being offered, the test is (320 U.S. at 352-353):

> ". . . what character the instrument is given in commerce by the terms of the offer, the plan of distribution, and the economic inducements held out to the prospect. In the enforcement of an act such as this it is not inappropriate that promoters' offerings be judged as being what they were represented to be."

Applying the foregoing principles, the Supreme Court in Howey held that sales of units of a citrus grove development coupled with management contracts were "investment contracts" (328 U.S. at 299). The Court defined the term "investment contract" as follows (328 U.S. at 298-299):

> ". . . an investment contract for purposes of the Securities Act means a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party, it being immaterial whether the shares in the enterprise are evidenced by formal certificates of by nominal interests in the physical assets employed in the enterprise."

This Court likewise has held consistently that an investment contract exists under the Securities Act when investors invest funds in a common enterprise and look solely to the promoters thereof to make their investments profitable. Los Angeles Trust Deed & Mortgage Exchange v. Securities and Exchange Commission, 285 F. 2d 162, 168, 172 (C.A. 9, 1960), cert. denied, 366 U.S. 919 (1961); Penfield Co. of California v. Securities and Exchange Commission, 143 F. 2d 746, 750-751 (C.A. 9, 1944), cert. denied, 323 U.S. 768; Atherton v. United States, 128 F. 2d 463, 465 (C.A. 9, 1942).

The evidence before the District Court establishes that, measured by any judicially approved standard (*cf*. *D. H. Roe* v. *United States*, 287 F. 2d 435 (C.A. 5, 1961), *cert*. *denied*, 368 U.S. 824), the instruments issued by the appellants are "investment contracts" within the meaning of Section 2(1) of the Securities Act. The economic welfare of the assignees of fractional interests in the various trusts sold by the appellants was inextricably interwoven among themselves and with the appellants in a single community of interest.[15/] The investor-assignees were prohibited from exercising any control whatever over management of the trusts or disposition of the underlying units of land held by the trusts. Accordingly, since appellants were offering and selling "investment contracts," which are defined specifically as securities by Section 2(1) of the Securities Act, the investors were entitled to the protection afforded by the Act through registration of these securities, and the ensuing full disclosure required by law.

15/ In the language of the trial court's findings (R. 20, p. 7):

> "The trust agreement is so drafted that it is difficult to envision additional provisions that would more effectively group the assignee investors into a single community interest among themselves and with the [appellants]."

The answer filed by the appellants admits that no registration statement has been filed with the Commission (R. 4). They do not contend that they were entitled to any exemption from registration nor did they even submit evidence to the District Court showing that any exemption was available. Exemptions from registration are strictly construed against claimants who must carry the burden of establishing that they are entitled thereto. Securities and Exchange Commission v. Ralston Purina Co., 346 U.S. 119, 126 (1953); Securities and Exchange Commission v. Sunbeam Gold Mines Co., 95 F. 2d 699, 701 (C.A. 9, 1938); Securities and Exchange Commission v. Culpepper, 270 F. 2d 241, 246 (C.A. 2, 1959).

The appellants devote a major portion of their argument (Br. 9-15) to a technical, and we believe futile, attack upon the types of proofs which the Commission submitted in its supporting affidavits covering two issues concerning which there is really no dispute. Thus they attack affidavits of investors and of the trust officer of the trust company which served as trustee of the appellants' investment plan as not showing "any use of the mails . . . by any of the appellants" (Br. 11). They also attack the affidavits of two Commission staff members, Hutton and Ziering, which affidavits did little more than identify photostatic and certified copies of certain documents which were attached thereto.

As to the former, the appellants are indulging in a meaningless quibble regarding a totally irrelevant matter. The Commission is not required to show that the appellants themselves used the mails, but merely that the mails were used by investors or any one else incidental to the illegal transactions, regardless of whether such persons were deputized or authorized by the appellants to act on their behalf. [16/] Thomas v. United States, 227 F. 2d 667, 670 (C.A. 9, 1955), cert. denied, 350 U.S. 911; Creswell-Keith, Inc. v. Willingham, 264 F. 2d 76, 81 (C.A. 8, 1959); Mansfield v. United States, 155 F. 2d 952, 955 (C.A. 5, 1946), cert. denied, 329 U.S. 792. Cf. Little v. United States, 331 F. 2d 287 (C.A. 8, 1964), cert. denied, 379 U.S. 834. In any event, aside from an unsworn initial answer, the appellants made no

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16/ Even though this is clearly so, the appellants' attempt to disown Joseph Allen, the uncle of appellant Allen, in his use of the mails as a representative of appellant Great Western in soliciting investor participation in the investment plan (Br. 11-12), is ludicrous. On two occasions the uncle accompanied the investor to the business offices of Great Western where he, together with the appellants Allen and Neve, engaged in joint effort to sell the investor (Affidavit of Kenneth Miller - R. 11).

serious attempt below to controvert the fact that the mails were used and the District Court found as a fact that the appellants "sold interests in the investment plan . . . to some 250 investors residing in 22 states of the United States and Canada" (R. 20, p. 7). How they could do this without using the mails or interstate facilities is totally incomprehensible.

As to the attack on the Hutton and Ziering affidavits and attached documents, these were offered to show the manner in which the appellants' investment plan was set up and the extent to which appellants had actually sold fractional trust interests - subjects on which there was ample other evidence in any event. As to the documents in particular, they were photostatic copies made from the files of the trust company, and from the records of a superior court of the State of Arizona and certified to as such by the clerk of the court. It borders on the frivolous to attack the use of these documents as a part of the plaintiff's case when the appellants made no attack whatever upon the authenticity of the documents or upon the oath or certification which identified them as true and correct copies of the originals.

C. <u>The Appellants' Contention that the District Court's Findings of Fact and Conclusions of Law do not Comply with Rule 52 of the Federal Rules of Civil Procedure is Clearly Erroneous</u>

The appellants contend (Br. 16-18) that the findings of fact and conclusions of law entered by the District Court (R. 20) fail to comply with that portion of Rule 52 of the Federal Rules of Civil Procedure which provides that in all actions tried without a jury "the court shall find the facts specially and state separately its conclusions of law thereon." 17/

The appellants have apparently overlooked the fact that Rule 52 provides specifically that findings of fact and conclusions of law as required thereunder are not necessary in deciding motions for summary judgment. A District Court may grant summary judgment without entering any findings whatever, *Lindsey* v. *Leavy*, 149 F. 2d 899, 902 (C.A. 9, 1945), *cert. denied*, 326 U.S. 783 (1946); or the

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17/ The appellants also contend that the Court's findings are not supported by the record (Br. 17). Comparison of the Court's findings (R. 20) with the statement of facts herein, pp. 5-13, *supra*, shows that this contention is groundless.

Court may cast its order in the form of a memorandum opinion without setting forth specific findings of fact and separate conclusions of law. A R Inc. v. Electro-Voice, Incorporated, 311 F. 2d 508, 513 (C.A. 7, 1962). This Court has pointed out that although findings of fact and conclusions of law are not required in deciding motions for summary judgment, the District Court may nevertheless enter such findings. United States v. Western Electric Co., 337 F. 2d 568, 572 (C.A. 9, 1964); Trowler v. Phillips, 260 F. 2d 924, 926 (C.A. 9, 1958).

Although the District Court was not required to conform its findings of fact and conclusions of law to Rule 52, it is clear that the Court's findings do conform precisely to that Rule.[18/] Compare the findings entered by the Court (R. 20) with the findings in Securities and Exchange Commission v. Los Angeles Trust Deed &

18/ Appellants contend that certain of the findings of fact are, in effect, merely conclusions of law (Br. 17). Aside from the fact that they are incorrect, they overlook the fact that the Court's findings specifically provide that if any "finding of fact may be construed more properly as a conclusion of law, the same is hereby adopted and incorporated herein as a conclusion of law" (R. 20, p. 13).

Mortgage Exchange, 186 F. Supp. 830 (S.D. Cal., 1960), modified and affirmed, 285 F. 2d 162 (C.A. 9), cert. denied, 366 U.S. 919 (1961).

II. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN GRANTING SUMMARY JUDGMENT AS THE RECORD INDICATED A REASONABLE LIKELIHOOD OF SIMILAR VIOLATIONS IN THE FUTURE.

A. Introduction.

Counsel for the appellants in urging that the case should be dismissed as moot, or that summary judgment should be entered on behalf of all the appellants, treats the appellants as a single entity without drawing any distinction whatever between the individual and corporate appellants. We believe, however, that in determining whether the appellants' past conduct and other pertinent circumstances indicate a likelihood of similar violations in the future, it is highly important to keep in mind that Allen and Neve are the real violators herein, and the corporate appellants are merely instruments through which they accomplished their unlawful activities.

B. Purported Cessation of Illegal Activities as a Result of the Commission's Investigation Does Not Bar Injunctive Relief.

This is not a case in which the violators have permanently abandoned their unlawful activities and demonstrated that they will

not revert to their former ways. The appellants began selling their investment plan to the public about February 1958 and continued selling until at least May 1962 (R. 1, 4). In fact, even as late as May 1962, they were still creating trusts, and the assignment of fractional interests therein to investors continued until at least June 1962.[19/] In light of this background, there can be little doubt that the temporary cessation of sales after May 1962 was caused by the Commission's investigation. Moreover, absence of recent sales is not entirely of the appellants' own choosing. Since August 30, 1962, Allen and Neve have been restrained and enjoined by order of the District Court from continuing their unlawful selling activities (R. 2, 10, 21, 25).

The contention of Allen and Neve that they do not intend to engage in the future in the practices constituting the violations set forth in the Commission's complaint (Br. 15, 22, 25, 26) is, in light of the record, disingenuous. Neve did not submit an affidavit or any other evidence showing that he would not resume unlawful sales and the affidavit submitted by Allen (R. 5) more than hinted that the appellants did not intend to cease offering their investment plan, but merely intended to clothe future sales

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19/ Trust No. 4355 appended to affidavit of Hutton (R. 3).

in real estate terminology.[20] In this connection, appellants rely heavily on the affidavits of the appellant Allen and of Chester J. Peterson who were contacted in the summer of 1962 by the Commission's staff member Hutton, "as representatives of the appellants" (Br. 12). Appellants' brief characterizes the affiants as having then advised Mr. Hutton "that in view of Mr. Hutton's belief that such sales constituted the sale of a security, no further sales would be made by any of the defendants in the manner and form objected to by Mr. Hutton . . . and that any sales in the future would be made by deed rather than by the deed and assignment to which Mr. Hutton objected" (Br. 13). This is, of course, a clear admission that the illegal sales were discontinued only because of an opinion of Mr. Hutton in which the appellants obviously did not concur and not because of any permanent intention to terminate their ventures of which the Commission here complains.

20/ The affidavit of Arnett (R. 7), an officer of International, does state that none of the appellants intend to offer investment contracts in any manner or form whatever. Arnett states, however, that Allen and Neve are no longer associated with the appellant corporations which merged with International. It is clear, therefore, that Arnett is not in a position to testify as to the intentions of Allen or Neve.

Indeed, the plain intent was to continue but on a modified basis which would supposedly circumvent the Securities Act. Moreover, this intention apparently continues to the present time inasmuch as the appellants' brief asserts that no injunction is necessary because there is no need for the appellants to repeat their unlawful sales "as interests in real property can quite properly be transferred by deed rather than by deed and assignment of beneficial interest" (Br. 22).

Furthermore, from the start appellants have contended that what they were selling was not a security and they even sought to dissuade the Commission's investigator by telling him that "the Attorney General of the State of Arizona had stated the sales did not involve securities under the laws of the State of Arizona, and they did not believe they were guilty of violating the laws of the United States" (Br. 12). The District Court could well have concluded from this that they had no honest intention to discontinue a practice which they professed to believe was entirely lawful

beyond the time during which they had to discontinue because of the outstanding temporary injunction.[21/]

Allen and Neve cannot avoid the registration requirements of the Securities Act by evasion or subterfuge. The investment plan which they sold to the investing public is a security and would remain such regardless of any change in the terminology used in the instruments of conveyance, or any change in the mechanics employed to carry out their ventures. As noted, in Securities and Exchange Commission v. W. J. Howey Co., 328 U.S. 293 (1946), the Supreme Court, in holding that sales of units of a citrus grove development coupled with management contracts were "investment contracts" notwithstanding that the instruments in question took

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21/ Indeed, Judge Craig said as much in footnote 5 to his findings and conclusions (R. 20, p. 12). He there stated that the appellants "at all times have denied that they were engaged in the sale of 'securities' in the form of 'investment contracts' within the meaning of Section 2(1) of the Securities Act, 15 U.S.C. §77b(1), and have defended vigorously the legality of the activities which the Commission has challenged. This fact, standing alone, . . . gives rise to the distinct likelihood that they may resume the course of action which they now say they have abandoned."

the form of real estate documents and their verbiage was typically such, pointed out (328 U.S. at 300):

> "Thus all the elements of a profit-seeking business venture are present here. The investors provide the capital and share in the earnings and profits; the promoters manage, control and operate the enterprise. It follows that the arrangements whereby the investors' interests are made manifest involve investment contracts, regardless of the legal terminology in which such contracts are clothed . . . ."

Under the circumstances herein, temporary cessation of sales during the brief period preceding entry of the restraining order, while the Commission's investigation was in progress, 22/ clearly does not bar injunctive relief. The test for issuance of a statutory injunction is whether the violator's past conduct indicates - under all the circumstances and not merely in view of the time which

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22/ Appellants contend that they made no sales since May 1962 (R. 4). The restraining order was entered on August 30, 1962 (R. 2). The appellants were aware of the Commission's investigation by at least July 1962 (R. 4).

has elapsed since the latest violation - that there is a reasonable likelihood of similar future violations. Securities and Exchange Commission v. Culpepper, 270 F. 2d 241, 249 (C.A. 2, 1959); Securities and Exchange Commission v. Universal Service Association, 106 F. 2d 232, 239-240 (C.A. 7, 1939), cert. denied, 308 U.S. 622 (1940); Otis & Co. v. Securities and Exchange Commission, 106 F. 2d 579, 584 (C.A. 6, 1939).[23/] Accordingly, in the cases mentioned above, the Commission was granted injunctive relief because the violator's past conduct indicated a reasonable likelihood of similar future violations, notwithstanding that illegal activities ceased prior to the institution of the injunctive action.[24/]

In Culpepper, the Court, in holding that a permanent injunction was necessary for the protection of the public interest in view of the appellants' past violations, said that "the Commission

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23/ See Loss, Securities Regulation, Vol. III (2d ed., 1961), p. 1976.

24/ For other cases holding that cessation of illegal activities does not bar injunctive relief, see Securities and Exchange Commission v. Okin, 139 F. 2d 87, 88 (C.A. 2, 1943); Securities and Exchange Commission v. Bennett & Co., 207 F. Supp. 919, 923 (D. N.J., 1962).

should not be required to keep these appellants under surveillance and to bring a subsequent injunction action if they commence again to sell 'tainted [unregistered] stock'" (270 F. 2d at 250). The Court stated that the Commission is entitled to an injunction under the Securities Act when "there is a reasonable expectation that the defendants will thwart the policy of the Act by engaging in activities proscribed thereby" (270 F. 2d at 249).

In Securities and Exchange Commission v. Keller Corp., 323 F. 2d 397, 402 (C.A. 7, 1963), a case involving, among other issues, whether the defendants violated anti-fraud provisions of the Securities Act, the Court, in rejecting the contention that injunctive relief was not necessary because violations did not continue up until entry of the preliminary injunction, observed that past misconduct "gives rise to the inference that there was a reasonable likelihood of future violations."

Where a discontinuance of illegal activities results from a violator's cessation at or about the time of the Commission's initiation of an investigation into those activities, then especially is no reason furnished for denying injunctive relief. As the Court of Appeals for the Second Circuit said in Securities

and Exchange Commission v. Boren, 283 F. 2d 312, 313 (C.A. 2, 1960):

> "[T]he cases are clear that a cessation of the alleged objectionable activities by the defendant in contemplation of an SEC suit will not defeat the district court's power to grant an injunction restraining continued activity . . . ."

As Judge Craig puts it very aptly in this case (R. 20, pp. 10-11):

> "The Courts and the Commission are not without experience in evaluating contentions by entrepreneurs of enterprises of dubious quality - when caught up by suits to enjoin their illegal offerings - that they have discontinued their solicitations of members of the investing public and that injunctive relief is not required. That is the defense most commonly advanced.
>
> "If allowed by the Courts, such contentions would rob the federal securities laws of much of their meaning. The Courts, however, have seen

through defenses of 'mootness' and have applied suitable sanctions . . . ." 25/

25/ This is somewhat analogous to the situation in which the staff recommends that the Commission institute proceedings to revoke the registration of a broker-dealer who, upon the institution of such proceedings, seeks to withdraw his registration and thus render moot the question of whether he is a violator of the federal securities laws. The courts have consistently held that the Commission does not have to accept such an alleged violator's attempt to withdraw from registration. The Commission may continue its revocation proceedings and thereby, if the case against him is proved, invoke a bar (Section 15(b)(5) of the Securities Exchange Act of 1934, 15 U.S.C. 78o(b)(5)) to his re-entering the broker-dealer business, rather than be forced to discontinue its proceedings and forever after have to maintain surveillance over the possibility that a violator of the federal securities laws may later seek to re-enter the broker-dealer field. See, *e.g.*, *Peoples Securities Co*. v. *Securities and Exchange Commission*, 289 F. 2d 268 (C.A. 5, 1961); *Blaise D'Antoni & Associates, Inc*. v. *Securities and Exchange Commission*, 289 F. 2d 276 (C.A. 5, 1961), *rehearing denied*, 290 F. 2d 688, *cert*. *denied*, 368 U.S. 899

None of the cases cited by the appellants (Br. 18-22) stand for the principle that cessation of illegal activities at about the same time that an administrative agency initiates its investigation bars injunctive relief. In fact, several of these cases actually militate against the position argued by the appellants. They cite (Br. 18) United States v. Oregon State Medical Society, 343 U.S. 326, 333 (1952), 72 S. Ct. 690, 695, for the principle that "[t]he sole function of an action for injunction is to forestall future violations." There, in an antitrust case, the Court was referring to violations which had ceased seven years before the United States commenced its suit for injunctive relief (343 U.S. at 334). The Court held that since the activities had been abandoned for seven years and there was no threat of resumption, the United States was not entitled to injunctive relief (343 U.S. at 334). The Court observed, however, that "[w]hen defendants are shown to have settled into a continuing practice . . . courts will not assume that it has been abandoned without clear proof. [citation omitted.] It is the duty of the courts to beware of efforts to defeat injunctive relief by protestations of repentance and reform, especially when abandonment seems timed to anticipate suit, and there is probability of resumption [citation omitted]" (343 U.S. at 333).

In Bowles v. Carnegie-Illinois Steel Corp., 149 F. 2d 545 (C.A. 7, 1945), a case upon which the appellants seem to place heavy emphasis (Br. 18-19), the Court refused to decide whether the defendant, one of the largest steel producers in the United States, purchased steel scrap at prices in excess of the ceiling set under wartime price regulations, although the Court obviously felt that if violations had occurred, they were somewhat technical and were caused to some extent by error and inadvertence. The Court said that injunctive relief was not appropriate, noting that the defendant, itself, informed the Price Administrator of its activities and immediately ceased them when advised that such activities did not conform to the Price Schedule, and the Price Administrator thereafter waited six months before bringing suit (149 F. 2d at 548). The Court found that there was no evidence whatever to indicate that the defendant would renew the objectionable activities and noted that eventually the Price Administrator directed

the defendant to engage in the very practices which were objected to in the complaint (149 F. 2d at 548).[26/]

In Securities and Exchange Commission v. Torr, 87 F. 2d 466 (C.A. 2, 1937), (Br. 20, 21), the Court held that "[o]rdinarily, it is no sufficient answer to a motion for an injunction that the improper conduct repeated in the past has been discontinued when action to impose legal restraint is known or thought to be in the offing" (87 F. 2d at 449), but reversed the order granting the

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26/ Shore v. United States, 282 Fed. 857 (C.A. 7, 1922) and Blease v. Safety Transit Co., 50 F. 2d 852 (C.A. 4, 1931), (Br. 19, 20), are also inapposite. Neither case involved a statute comparable to Section 20(b) of the Securities Act, which confers upon the Commission broad authority to seek injunctive relief. In Shore, the primary issue was the power of a court of equity to abate a nuisance. The issue in Blease was whether a state railroad commission could seek injunctive relief to enjoin a common carrier from operating its busses in intrastate commerce, under circumstances where there was no showing that the carrier had or intended to so operate except as authorized by law.

Commission's motion for preliminary injunction because the defendants had engaged in the objectionable activities for only a little over a month and because, until the disputed facts could be tested by trial, the Court accepted the defendants' contention that they were attempting to conform to the law and past violations, if any, were inadvertent (87 F. 2d at 450). Circuit Judge Learned Hand dissented, pointing out that the record reflected the "probability of a repetition of the wrong" (87 F. 2d at 450). It is not without significance that upon the trial on the merits, the District Court permanently enjoined most of the defendants. Securities and Exchange Commission v. Torr, 22 F. Supp. 602 (S.D. N.Y., 1938).

Nor are Hecht Co. v. Bowles, 321 U.S. 321 (1944), and United States v. W. T. Grant Co., 345 U.S. 629 (1953), (Br. 19, 21), any comfort to the appellants. In Hecht, the Supreme Court noted that cessation of illegal conduct, even before institution of suit, does not bar injunctive relief (321 U.S. at 327), but held that under the special circumstances there involved - good faith difficulty of a large department store in complying with wartime price regulations - injunctive relief was not appropriate. In Grant, the Supreme Court said that injunctive relief may not be appropriate if a violator "can demonstrate that 'there is no reasonable expectation that the wrong will be repeated'" (345 U.S.

at 633), but noted that the violator's burden of proof is "a heavy one" (345 U.S. at 633).

Surely, the appellants in this case have not satisfied this "heavy burden" by merely stating that they intend to refrain from unlawful sales in the future (Br. 15, 22, 25, 26). The District Court rejected these self-serving declarations of good intentions. Under similar circumstances, other courts have likewise refused to withhold injunctive relief to the Commission, which it sought in the public interest, simply because violators, when caught up in suits to enjoin their objectionable activities, promised to refrain in the future. See, R. J. Koeppe & Co. v. Securities and Exchange Commission, 95 F. 2d 550, 553 (C.A. 7, 1938); Securities and Exchange Commission v. Mono-Kearsarge Consolidated Mining Co., 167 F. Supp. 248, 261 (D. Utah, 1958); Securities and Exchange Commission v. Lawson, 24 F. Supp. 360, 365 (D. Md., 1938). The District Court specifically found that there is no assurance that appellants Allen and Neve "may not, at some future date, resume their unlawful activities" (R. 20, p. 8). This finding was fully supported by the history of past violations, and the distinct possibility that these appellants would continue sales in the future by clothing their investment plan in real estate terminology. Moreover, as noted, p. 31, fn. 21, supra, the District Court believed

that the appellants' declarations that they would not continue their selling activities was somewhat at odds with the fact that throughout the proceedings below they defended vigorously the legality of the activities which the Commission challenged. Cf. Otis & Co. v. Securities and Exchange Commission, 106 F. 2d 579, 584 (C.A. 6, 1939). For these reasons, the contention of the appellants that the District Court did not find that there was "some threat of future violations" (Br. 25) as required by Rule 65(h) of the Federal Rules of Civil Procedure, is clearly without merit.

C. Dissolution of Certain Corporate Appellants Does Not Bar Injunctive Relief.

The appellants contend that there is no need for injunctive relief because the summary judgment of permanent injunction enjoins only the sale of securities issued by the appellant corporations, and all of these corporations have been liquidated or are inactive (Br. 22). Aside from the fact that the appellants have not established that one of the corporate appellants, Allen Neve Enterprises, Inc., is either defunct or inactive (p. 13, supra), appellants misstate the scope of the permanent injunction, which enjoins the appellants from the sale of any "securities issued by the defendant corporations (or by any affiliated person or

:orporation now existing or hereafter to be formed) . . . or any)ther securities" (emphasis added, R. 21). Since the appellant :orporations were merely the instruments through which Allen and Ieve publicly offered and sold their investment plan, it is clear :hat the injunction was intended to and does prohibit the individual ıppellants from continuing their violations by creating other :ompanies as media for unlawful sales.

The fact that certain of the corporate appellants have merged vith International, subsequent to entry of the restraining order, loes not bar injunctive relief even as to those appellants. In Securities and Exchange Commission v. Electronics Securities Corp., 217 F. Supp. 831, 833 (D. Minn., 1963), the Commission was granted .njunctive relief even though the corporate defendant had already surrendered its securities license to the State Securities)ivision and ceased to exist as an active corporation. In Securities and Exchange Commission v. Culpepper, 270 F. 2d 241, 250-251 (C.A. 2, 1959), and Securities and Exchange Commission v. .awson, 24 F. Supp. 360, 365 (D. Md., 1938), injunctions were issued ıgainst broker-dealers who had discontinued their securities businesses prior to trial. Cf. Securities and Exchange Commission v. Universal Service Association, 106 F. 2d 232, 239-240 (C.A. 7, 1939), cert. enied, 308 U.S. 622 (1940).

In Standard Container Mfrs.' Ass'n. v. Federal Trade Commission, 119 F. 2d 262, 265 (C.A. 5, 1941), in affirming as modified a cease and desist order issued by the Federal Trade Commission, the Court evaluated the contentions of certain petitioners that the order should not run against them as they were out of business or in bankruptcy, as follows:

> "[T]he order is not retrospective, but wholly prospective in operation, and if these petitioners are really out of business to stay, they can take no harm from it. But questions of harm aside, they were in business when the proceeding was properly begun against, and jurisdiction properly obtained over, them; that jurisdiction was not lost by their going out of business or taking bankruptcy; and these facts furnish no ground for setting the order aside." 27/

27/ See also United States v. Trans-Missouri Freight Association, 166 U.S. 290, 308 (1897), where, in an antitrust case, the Supreme Court refused to dismiss the government's appeal even though the defendant association had voluntarily dissolved. Cf. Goodman v. Federal Trade Commission, 244 F. 2d 584, 593 (C.A. 9, 1957).

In the context of the entire record, we believe that the District Court best served the public interest by entering summary judgment of permanent injunction as to both the individual and corporate appellants even though the primary danger to the investing public arises from the likelihood that the individual appellants will resume their unlawful course of conduct. If this Court should conclude, however, contrary to our views, that injunctive relief should not run against the dissolved corporate appellants, it would be preferable that this Court so modify the decree entered by the District Court, rather than remanding the case for further proceedings.[28/]

28/ We believe that this Court should not consider removing under any circumstances the injunction as to Great Western, which still exists as a separate corporation, or as to Allen Neve Enterprises, Inc., which, so far as the record shows, is still active and under the control of Allen and Neve.

CONCLUSION

For the foregoing reasons, the judgment of the District Court should be affirmed.

Respectfully submitted,

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CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

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STATUTORY APPENDIX

SECURITIES ACT OF 1933

An Act to provide full and fair disclosure of the character of securities sold in interstate and foreign commerce and through the mails, d to prevent frauds in the sale thereof, and for other purposes.

Section 1. This act may be cited the Securities Act of 1933.

Sec. 2. When used in this title, unless the conxt otherwise requires—

(1) the term "security" means any note, stock, easury stock, bond, debenture, evidence of inbtedness, certificate of interest or participation any profit-sharing agreement, collateral-trust rtificate, preorganization certificate or subscripon, transferable share, investment contract, votg-trust certificate, certificate of deposit for a curity, fractional undivided interest in oil, gas, other mineral rights, or, in general, any interest instrument commonly known as a "security," any certificate of interest or participation in, mporary or interim certificate for, receipt for, uarantee of, or warrant or right to subscribe to r purchase, any of the foregoing. 1/

* * *

Sec. 5. (a) Unless a registration statement is in ffect as to a security, it shall be unlawful for any erson, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise; or

(2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.

(b) It shall be unlawful for any person, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to carry or transmit any prospectus relating to any security with respect to which a registration statement has been filed under this title, unless such prospectus meets the requirements of section 10; or

(2) to carry or cause to be carried through the mails or in interstate commerce any such security for the purpose of sale or for delivery after sale, unless accompanied or preceded by a prospectus that meets the requirements of subsection (a) of section 10.

(c) It shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under section 8. 2/

* * *

/ 15 U.S.C. 77b(1).

/ 15 U.S.C. 77e.

Sec. 20.
(b) Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this title, or of any rule or regulation prescribed under authority thereof, it may in its discretion, bring an action in any district court of the United States, United States court of any Territory, or the United States District Court for the District of Columbia to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices to the Attorney General who may, in his discretion, institute the necessary criminal proceedings under this title. Any such criminal proceeding may be brought either in the district wherein the transmittal of the prospectus or security complained of begins, or in the district wherein such prospectus or security is received. 3/

* * *

Sec. 22. (a) The district courts of the Uni
States, the United States courts of any Territo
and the United States District Court for
District of Columbia shall have jurisdiction
offenses and violations under this title and un
the rules and regulations promulgated by the Co
mission in respect thereto, and concurrent w
State and Territorial courts, of all suits in equ
and actions at law brought to enforce any liabi
or duty created by this title. Any such suit
action may be brought in the district wherein
defendant is found or is an inhabitant or trans
business, or in the district where the offer or s
took place, if the defendant participated ther
and process in such cases may be served in
other district of which the defendant is an inh
tant or wherever the defendant may be fou
Judgments and decrees so rendered shall be s
ject to review as provided in sections 128 and
of the Judicial Code, as amended (U. S. C., t
28, secs. 225 and 347). No case arising under
title and brought in any State court of com
tent jurisdiction shall be removed to any co
of the United States. No costs shall be asses
for or against the Commission in any proceed
under this title brought by or against it in
Supreme Court or such other courts.

3/ 15 U.S.C. 77t(b).

4/ 15 U.S.C. 77v(a).